

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment to the Commission's)
Regulatory Policies Governing)
Domestic Fixed Satellites and)
Separate International Satellite)
Systems)

IB Docket No. 95-41

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To: The Commission

REPLY COMMENTS OF ORION NETWORK SYSTEMS, INC.

Orion Network Systems, Inc. ("Orion"), hereby submits these Reply Comments in accordance with the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 95-146, released April 25, 1995. In these Reply Comments, Orion responds to Comments filed by other parties in this proceeding with respect to three issues of particular importance to Orion: (1) the need to retain the two-stage financial qualification showing for separate international systems; (2) the need to prevent COMSAT from exploiting its status as INTELSAT signatory to provide U.S. domestic service; and (3) the need to preserve the opportunity for separate international satellite systems to offer services on a non-common carrier basis.

I. The Two-Stage Financial Qualification Showing Should Be Retained for Separate International Systems.

As Orion explained in its Comments filed in this proceeding on June 8, 1995, the international regulatory and business environments for international satellite services will not be

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altered by the policies proposed in the Notice. Specifically, international satellite operators will continue to face greater regulatory uncertainty than domestic operators because of (1) the need to coordinate with INTELSAT and with the satellite systems proposed by other nations and (2) the need for ground segment licensing in other nations, the access to which is not always a certainty.^{1/} In this regard, Orion disagrees with the contention of Hughes Communications Galaxy, Inc. ("HCG") that the restrictions which previously hampered the ability of separate system operators to raise financing have been eliminated.^{2/} Contrary to HCG's assertion, the continuing reality is that the proposals of U.S. separate system operators for international service generally involve the use of orbital slots over the ocean regions of the world -- the same slots that are being proposed for similar service by INTELSAT and other nations. The resulting uncertainty with respect to co-located or adjacent proposals justifies the continuation of the two-stage financial qualifications policy.^{3/} Furthermore, as Orion pointed out in its Comments, the Commission's premise that, with access to the U.S. domestic market, an international satellite can be financed largely based on the provision of intra-U.S. revenues is not valid because an orbital slot suitable for international

^{1/} Orion Comments at 6-9.

^{2/} Comments of Hughes Communications Galaxy (HCG) at 15.

^{3/} See also, e.g., Comments of Columbia Communications Corporation at 6-7.

communications generally permits only regional coverage for domestic U.S. service. Because only a portion of the international system's capacity can be utilized for domestic service, the majority of the revenue for such a system must be generated from international service, the complexities and uncertainties of which are much greater than in the U.S. domestic market.

Finally, the stringent one-stage showing proposed by the Commission for U.S. separate international system operators would give foreign competitors a distinct advantage over U.S. companies. While the domestic marketplace exhibits a fairly predictable demand for orbital locations, international orbital slots are being sought not only by U.S. companies but foreign corporations and governmental entities, as well. The growing number of potential competitors from around the world seeking access to scarce orbital locations from which international satellite service can be provided makes it imperative that companies have the ability to act expeditiously in filing for orbital locations and obtaining authorizations that will enable them to commence the processes for international frequency coordination and downlink licensing. Under the Commission's proposal, separate international system operators such as Orion would be at a significant disadvantage with respect to foreign companies who are also vying for orbital locations because they would be required to put in place their entire financing arrangements prior to obtaining an authorization from the

Commission. In contrast, foreign competitors, who would not be hindered by the Commission's licensing restrictions, would not be burdened by the delays inherent in the financial qualifications requirement.

For the foregoing reasons, Orion reiterates the recommendation set forth in its Comments that the Commission retain the two-stage financial qualification showing for separate international satellite systems.

**II. COMSAT Should Not Be Permitted to
Provide U.S. Domestic Service.**

In its Comments in this proceeding, COMSAT Corporation ("COMSAT") argued that it should be permitted to provide U.S. domestic service, claiming that it does not possess market power in international communications which can be leveraged in the domestic market.^{4/} COMSAT's claim is contrary to the facts, as demonstrated in the Comments filed by numerous parties in this proceeding.^{5/} As an international treaty organization, INTELSAT and its Signatories, including COMSAT, enjoy a broad range of governmental privileges and immunities which confer upon them a significant competitive advantage in the international satellite communications marketplace. Unless and until there is a substantial structural reform of INTELSAT, COMSAT should not be permitted to enter the marketplace for U.S. domestic satellite

^{4/} COMSAT Comments at 3-8, 9-11.

^{5/} See, e.g., Comments of GE American Communications, Inc. at 12; AT&T Corp. at 13-14; Columbia Communication Corporation at 8-11; PanAmSat Corporation at 8-9.

services. In any event, as recommended by several parties commenting in this proceeding, the question of COMSAT's entry into the domestic service marketplace -- either FSS or MSS -- should be addressed in a separate rulemaking proceeding on which comment on that question is specifically sought.^{6/}

III. A Non-Common Carrier Election Should Be Permitted

As stated in its Comments, Orion supports the Commission's finding that satellite operators should be permitted to elect to provide customized alternatives in flexible non-common carrier service offerings to domestic and international end users.^{7/} Other commenting parties agreed.^{8/} COMSAT, while agreeing with the Commission's tentative conclusion that satellite operators should be allowed to elect whether to provide service on a common carrier or non-common carrier basis, claims that separate satellite system operators are no longer limiting themselves to offering "customized services" and that they are now offering services on a common carrier basis "to anyone willing to pay the fare."^{9/} According to COMSAT, a satellite operator "cannot have it both ways -- providing service for profit to the public at

^{6/} See, e.g., Comments of Motorola Satellite Communications, Inc. at 2-3; Comments of TRW, Inc. at 2-3; and Orion Comments at 5.

^{7/} Orion Comments at 9-10.

^{8/} See, e.g., Comments of AT&T Corp. at 10-12; HCG at 17-19.

^{9/} COMSAT Comments at 14-15.

large, and yet 'electing' to be regulated as a non-common carrier."^{10/}

Contrary to COMSAT's assertions, transactions involving U.S. separate international satellite systems and their customers -- at least those involving Orion and its customers -- do not involve common carrier offerings. These transactions are customized specifically to meet the needs of particular users, all of whom are sophisticated businesses which are fully capable of negotiating all terms of the transaction, including price and conditions of service. They are not transactions for services that are held out "to the public at large."^{11/} Accordingly, there are no "reasons implicit in the nature of the service to expect and indifferent holding out to the eligible user public," which is part of the test for common carriage established by the court in National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir.); cert. denied, 425 U.S. 992 (1976).

A second reason why the Commission should continue its present policy of allowing satellite operators to elect non-common carrier status is that it would be fundamentally unfair to Orion and others for the Commission to change the rules in mid-course. In reliance on the Commission's 1985 determination that separate systems would operate on a non-common carrier basis,^{12/}

^{10/} Id. at 14.

^{11/} COMSAT Comments at 14.

^{12/} Separate Systems Decision, 101 FCC 2d 1046, 1102-03.

Orion specifically structured its ownership and financing to include foreign participation. This was done with complete approval by the Commission, which itself recognized the need for foreign participation in international ventures such as Orion's.^{13/} For the Commission to reverse course and to treat separate systems as common carriers as recommended by COMSAT would subject Orion and other separate systems to the foreign ownership limitations of Section 310(b) of the Communications Act, thus invalidating by regulatory fiat an ownership structure to which the Commission gave its specific approval and upon which Orion and its investors have relied.^{14/} Such a result obviously would be fundamentally unfair, and COMSAT's recommendation should be rejected by the Commission.

IV. Conclusion

In conclusion, Orion respectfully recommends that the Commission adopt revised rules and policies with respect to domestic and international satellite service that are consistent

^{13/} See, e.g., Orion Satellite Corporation, 5 FCC Rcd 4937, 4940 (1990).

^{14/} Id.

with the views set forth in Orion's Comments filed on June 8,
1995 and in these Reply Comments.

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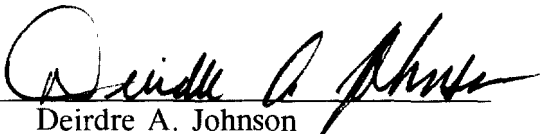
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